

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COLLEEN SHY, Individually, and as Special Administrator of the Estate of Neil Shy,)		
)		
Plaintiff,)	Case No:	
)	FILED	
AMERICO FINANCIAL LIFE AND ANNUITY)	MAY 12, 2008	YM
INSURANCE CO., d/b/a AMERICO,)	08CV2736	
)	JUDGE DARRAH	
Defendant.)	MAGISTRATE JUDGE VALDEZ	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant Americo Financial Life And Annuity Insurance Co. (“Americo”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes the state court action entitled *Shy v. Americo Financial Life And Annuity Insurance Co.*, Civil Action No. 08-L-003182, filed in the Circuit Court of Cook County, Illinois.

I. INTRODUCTION

Plaintiff, Colleen Shy, filed this breach of contract action alleging that Americo breached the terms of a life insurance policy thereby denying her life insurance benefits allegedly owed under the policy following the death of her husband, Neil Shy. Neil Shy passed away on June 2, 2007. Plaintiff filed this lawsuit in the Circuit Court of Cook County, Illinois, on March 21, 2008. A true and correct copy of the Complaint is attached hereto as Exhibit A. Americo has not filed an answer or responded to the Complaint.

II. GROUNDS FOR REMOVAL

Title 28 U.S.C. § 1441(a) authorizes removal of “any civil action brought in State court of which the district courts of the United States have original jurisdiction.” Original jurisdiction of this action exists pursuant to 28 U.S.C. §§ 1332 and 1441 because it is a civil action in which

the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between the citizens of a foreign state and the citizens of a State under 28 U.S.C. § 1332(x)(2).

A. This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441.

1. Amount in controversy.

It is apparent from the face of the Complaint that plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. Ex. A, ad damnum claim, requesting judgment against Americo “in the amount of \$100,000.” In the Seventh Circuit, whether the amount in controversy exceeds \$75,000 is determined by reference to the amount alleged in the complaint's ad damnum clause. *Andrews v. E.I. Du Pont De Nemours and Co.*, 447 F.3d 510, 514-15 (7th Cir.2006) (citing *Rising-Moore v. Red Roof Inns, Inc.*, 435 F.3d 813, 815 (7th Cir.2006)). Indeed, absent legal impossibility, the damage estimate in the complaint controls. *Rising-Moore*, 435 F.3d at 815 (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 58 S.Ct. 586, 82 L.Ed. 845 (1938)). Here, Plaintiff’s complaint confirms that the amount in controversy requirement for jurisdiction has been satisfied.

2. Complete diversity of citizenship.

There is complete diversity of citizenship between plaintiff and defendant under 28 U.S.C. § 1332(a)(2). Plaintiff, Colleen Shy, is alleged to be a resident of Oak Lawn, Illinois. Americo is, and was at the time plaintiffs filed this action, a Texas corporation with its principal place of business in Kansas City, Missouri.

III. AMERICO HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

The United States District Court for the Northern District of Illinois embraces the county in which the state court action is now pending. Therefore, this action is properly removed to the Northern District of Illinois pursuant to 28 U.S.C. § 1441(a).

Pursuant to 28 U.S.C. § 1446(d), Americo will promptly file written notice of this removal and a copy of the Notice of Removal with the clerk of the state court in which this action is currently pending and will serve a copy of this notice on Plaintiff. Americo will also file a copy of all additional papers in the state court record, if any, with this Court.

By filing this Notice of Removal, Americo does not waive, and hereby reserves, any right to assert objections and defenses to Plaintiffs' complaint, including but not limited to, all objections and defenses relating to service of process and venue.

WHEREFORE, defendant Americo respectfully removes this action from the Circuit Court of Cook County, Illinois, bearing Number 08-L-003182, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

DATED: May 12, 2008.

By: s/Robert E. Sweeney, Jr.
One of the Attorneys for Defendant Americo
Financial Life And Annuity Insurance
Company, d/b/a Americo

Robert E. Sweeney, Jr.
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CERTIFICATE OF SERVICE

The undersigned attorney, Robert E. Sweeney, Jr., hereby certifies that he served the foregoing NOTICE OF REMOVAL upon:

Eric Parker
STOTIS & BAIRD CHARTERED
200 West Jackson, Suite 1050
Chicago, Illinois 60606

via U.S. mail, postage pre-paid on this 12h day of May, 2008.

/s/Robert E. Sweeney, Jr.
Robert E. Sweeney, Jr.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

COLLEEN SHY, Individually, and as Special
Administrator of the Estate of Neil Shy,

Plaintiff,

v

AMERICO FINANCIAL LIFE AND ANNUITY
INSURANCE CO., d/b/a AMERICO,

Defendant

08CV2736

JUDGE DARRAH YM

MAGISTRATE JUDGE VALDEZ

Case No:

2008L003182

CALENDAR/ROOM Q

TIME 00:00

Breach of Contract

COMPLAINT AT LAW

NOW COMES the Plaintiff, COLLEEN SHY, Individually, and as Special Administrator of the Estate of Neil Shy, by and through his attorneys, STOTIS & BAIRD CHARTERED, and hereby complains of the Defendant, AMERICO FINANCIAL LIFE AND ANNUITY INSURANCE CO., d/b/a AMERICO., as follows:

BREACH OF CONTRACT

1. That Colleen Shy is an individual residing at 10836 South Komensky Avenue, Oak Lawn, Illinois and a legal resident of the State of Illinois.
2. That the Defendant, AMERICO, is a company authorized to write life insurance in the State of Illinois.
3. That on or about October 11, 2006, Neil Shy submitted an application (hereinafter referred to as the "Application") for life insurance coverage with the Defendant, AMERICO.
4. That the Plaintiff delivered to AMERICO timely payment as the proposed consideration for defendant's acceptance of the application.

5. That Defendant AMERICO accepted Neil Shy's application and premium payment, thereby entering into a contract with Plaintiff to provide life insurance pursuant to the terms and conditions of the policy (herein "Policy").

6. That on or about June 2, 2007, Neil Shy passed away.

7. That on or about January 10, 2008, the Defendant AMERICO breached the policy by wrongfully denying coverage and rescinding the policy.

8. That as a result, Colleen Shy, as the sole beneficiary of the policy, has been denied life insurance coverage which was owed to her under the Policy.

WHEREFORE, the Plaintiff prays for the following relief against the Defendant AMERICO:

1. Judgment in favor of Plaintiff in the amount of \$100,000;
2. Interest and costs as allowed by the Court;
3. For further relief as the Court may deem fit.

STOTIS & BAIRD CHARTERED

By: 

Eric J. Parker

STOTIS & BAIRD CHARTERED
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